TAN GER LIM

v.

THE COLLECTOR OF LAND REVENUE, MARAN

HIGH COURT MALAYA, KUANTAN
SHAIK DAUD ISMAIL J
[LAND REFERENCE NO. 42 OF 1982]
3 JANUARY 1984

LAND LAW: *Acquisition of land - Award of Collector of Land Revenue - Whether adequate - Land Acquisition Act 1960 s. 38 (5).*

The case before the Court was on a reference made to the Court by the Collector of Land Revenue under s. 38(5)of the Land Acquisition Act 1960 ("the Act") in respect of the compulsory acquisition by the Government of Pahang. The Collector had made an award of RM10,000 per acre and an additional RM1,000 for the labour line situated on the land. The objector claimed RM18,000 per acre.

Held:

[1] It was for the applicant, who was objecting on the ground of inadequacy of award, to show *prima facie* that the award was inadequate. *(Chuah Say Hai & Ors. v. Collector of Land Revenue, Kuala Lumpur* [1967] 2 MLJ 99).

[2] The sum awarded by the Collector was somewhat on the low side and ought to be increased to RM18,000 per acre. The government valuer had adopted the comparable method, which is deemed to be the best method of ascertaining the market value but the kampong lands he used as a basis could hardly be said to bear similar characteristics, with similar advantages as the subject land.

Case referred to:
Chuah Say Hai & Ors. v. Collector of Land Revenue, Kuala Lumpur [1967] 2 MLJ 99

Legislation referred to:
Land Acquisition Act 1960, s.38(5).

For the objector - Mahindar Singh; M/s. Mahindar & Co.
For the respondent - Dato' Wan Mohamad bin Wan Muda; State Legal Adviser, Pahang

JUDGMENT

Shaik Daud Ismail J:

This is a reference made to the Court by the Collector of Land Revenue under s. 38(5) of the Land Acquisition Act 1960, in respect of the compulsory acquisition by the Government of Pahang. The land acquired is Lot No. 1417 E. 1373 an area of 4 acres 3 rood and 20 poles.

The intended acquisition was gazetted on 26 February 1981 pursuant to s. 8 of the Act so that the market value of the land acquired had to be determined as at 26 February 1981. The Collector held an enquiry on 28 April 1981 under s. 12 of the Act and made an award of RM10,000 per acre and an additional RM1,000 for the labour line situated on the land. The Collector has not given any reasons for making the award but presumably he relied entirely on the valuation report of Encik Faizan b. Abdul Rahaman, the Government Valuer.

At the hearing of the objection the Court is assisted by two assessors namely Encik K. Sethu and Tuan Haji Mohamed b. Haji Ali. The Collector is represented by Y.B. Dato Wan Mohamed the State Legal Adviser while the objector is represented by Mr. Mahindar Singh.

In a reference to Court under s. 38(5) of the Land Acquisition Act 1960 and on the authority of *Chuah Say Hai & Ors. v.Collector of Land Revenue, Kuala Lumpur* [1967] 2 MLJ 99, it is for the applicant who objects to the award on the ground of inadequacy to show *prima facie* that such an award is inadequate.

The generally recognised methods of ascertaining the market value of the land acquired are first by considering the purchase price of *bona fide* transactions of the same land or part of the same land acquired or of lands surrounding the land acquired, within a reasonable time in relation to the relevant date of acquisition, and having more or less similar characteristics as that of the land acquired; secondly, by the number of years purchase of the profit from the land acquired and thirdly, on the evidence of expert valuers. In considering this the Court has to consider any sales of the very same land acquired in a fairly reasonable time before the relevant date or if lands in the surrounding areas had been similarly acquired or purchased in bona fide transactions. In *Chuah Say Hai & Ors. v. Collector of the Land Revenue, Kuala Lumpur, supra,* Gill J (as he then was) at p. 100 said:-

> It is clear from the authorities that where the land acquired was purchased by the owner within a reasonable time of its compulsory acquisition, the price paid affords infinitely the best material for calculating its market value, the reason being that the elements of dissimilarity will be least present when the transaction sought to be applied is a previous purchase of the same property. The owner, of course, can show that since his purchase there has been an all round increase in the price of land generally, in which case a proper allowance can be made for such increase. Where there has been no recent sale of the same land, only sales within a reasonable period of lands more or less similarly situated in the same neighbourhood and possessing similar advantages are helpful in determining the market value of any land. As no two lands can be precisely similar in all their circumstances and conditions, a suitable allowance can be made for any differences. No hard and fast rule can be laid down for the allowances to be made in respect of the increase in value of the same land or for the differences between the land acquired and the neighbouring lands, but market value is not required to be calculated with mathematical accuracy and precision. What is required is a fair estimate of market value. It is only in the absence of evidence of recent sales of the same land or lands in the same vicinity that other methods of ascertaining the market value can properly be resorted to. Estimates of value by experts are undoubtedly some evidence, but their value is not great, as expert opinion is liable to err, unless it is supported by, or coincides with other evidence.

Mr. G. Subramaniam, a registered appraiser and auctioneer, in giving evidence in Court on behalf of the objector, said that he valued the said land at RM18,000 per acre and tendered his report marked OR. He said that the land in question is high ground and undulating but this factor does not affect the value of the land. At the time of the valuation there had been development in the outskirt area in that two schools and a playing field had been erected. Water and electricity are available up to the school. The land is about 100 to 200 yards from the main road. He said that on 28 April 1981 the Government acquired one acre and 20 poles on Lot 1539 where one of the schools is situated which is approximately 250 meters from Lot 1417, for the purpose of access road and the award given was RM25,000 per acre. The condition on the title of Lot 1539 is only for the use of a school and as such, has no commercial value as there would not be a willing buyer with such a restrictive title. Mr. Subramaniam also considered the value of other lands in the vicinity. Eleven months earlier

that is on 28 July 1980 Lot 4266 was sold for RM16,000. This lot is situated in a swamp and is cut off by a water course. Compared to this lot, Lot 1417 is far superior. According to Mr. Subramaniam, between 28 July 1980 and 28 July 1981 the property value in the district went up. This was as a result of the old town of Maran being completely demolished and shifted to the right side of the main road as one faces Temerloh and Lot 1417 is on the same side. He also valued another land that is Lot AA 63/54 which is a leasehold property. This lot was acquired at the same time as Lot 1417 and the government valued Lot AA 63/54 at RM12,000 per acre. Mr. Subramaniam said that he would value Lot AA 63/54 at RM22,000 per acre, as there was no restriction on the title. It is Mr. Subramaniam's opinion that these 3 lots have the nearest comparable factor with Lot 1417. Furthermore, the subject land is within the Town Board area.

Encik Faizan b. Abd Rahman the government valuer, in his evidence, says that his valuation is based on sales of surrounding land. He appears to have adopted the comparable method. He valued Lot 1417 at RM10,000 per acre based on two comparable sales of Lot 4229 on 13 November 1980 and Lot 4266 on 28 July 1980. These 2 lots in question are situated in a Malay kampong called Kampong Berkat which is the main residential area of Maran Town. Encik Faizan states that in arriving at RM10,000 per acre of the subject land he did not consider it to have a housing development potential but unfortunately he did not give any reason for saying this; however, he admits in cross-examination that Lot 1417 and 3 other lots were acquired by the government for government quarters. The question is, even before acquisition, has Lot 1417 an area of over 4 acres development potential? On the evidence available, I think that Lot 1417 has a better development potential than the comparable lots of one acre each situated at the end of a Malay kampong and surrounded by swamp. The thought of kampong Berkat which is a traditional Malay kampong developing into a housing estate is almost nil. The element of willing buyer and willing seller is absent. Although there is no development plan at the moment for the area where subject lot is but the fact that in the future it could be developed into a residential housing area cannot be ruled out. This is further evidenced by the fact that subject land and 3 other lots were acquired by the government for government quarters. Although Encik Faizan adopted the comparable method which is deemed to be the best method of ascertaining the market value but I am of the view that the kampong lands he used as a basis can hardly be said to bear similar characteristics with similar advantages as the subject land. Furthermore in cross-examination he could not satisfactorily explain how he arrived at a figure of RM25,000 for Lot 1539 but merely says he considered the replacement value without giving any explanations or reasons.

After considering all the evidence before us the Court and the assessors are of the view that the sum of RM10,000 per acre awarded by the Collector was somewhat on the low side. After taking all the factors into consideration we feel unanimously that the Collector's award ought to be increased to RM18,000 per acre. In the event we order that the award be increased from RM10,000 per acre to RM18,000 per acre.

Also found at [1984] 1 CLJ 270